

**REMARKS**

Claim 19 has been amended by this amendment. No new matter has been added.

Claim 21 has been cancelled by this amendment.

Claims 1 -18 were previously cancelled.

Claims 19 to 30 are pending in the present application.

**Claim Rejections – 35 USC § 112**

Claims 19-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states "In claim 19, there is lack of antecedent basis for "the longitudinal axis of the vessels". It is unclear if the invention is limited to vessels having a symmetry such that a longitudinal axis is defined."

Of the claims rejected claim 19 is independent with the remaining claims dependent thereon.

Applicants have amended claim 19 to address the Examiner's rejection.

Reconsideration and withdrawal of this rejection is earnestly solicited.

**Claims Rejection – 35 USC § 102**

Claims 19-26, 28 and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,477,192 to Bonney (“Bonney”).

This rejection is respectfully traversed with respect to the amendment to claim 19.

Of the claims rejected, amended claim 19 is independent with the remaining claims dependent thereon.

Amended claim 19 is directed to a system, said system comprising (emphasis added):  
*a plurality of sample vessels, each of the sample vessels comprising a longitudinal axis, a growth medium and a stirrer, the stirrer capable of being influenced by a magnetic force; and an incubation and measurement module comprising*

*at least one panel comprising a plurality of openings for holding the sample vessels, and*

*a magnet driver comprising a plurality of magnets, wherein each of the openings corresponds with only one of the magnets, wherein the magnet driver is adapted to repeatedly move each corresponding magnet proximate to and distant from the surface of a corresponding sample vessel when located in the corresponding opening, wherein during operation of the magnet driver, the movement of only the corresponding magnet imposes a magnetic influence on the stirrer in the corresponding sample vessel to move the stirrer, and wherein the openings are configured to hold the one or more sample vessels such that the longitudinal axis of the vessels are at an angle of less than 90° with the horizontal.*

Applicants respectfully point out Bonney fails to disclose at least the claimed features of (a) a sample vessel comprising a growth medium and (b) each of the openings for holding the sample vessels corresponds with only one of the magnets, wherein the magnet driver is adapted to repeatedly move each corresponding magnet proximate to and distant from the surface of a corresponding sample vessel when located in the corresponding opening, wherein during operation of the magnet driver, the movement of only the corresponding magnet imposes a magnetic influence on the stirrer in the corresponding sample vessel to move the stirrer. Applicants also dispute other aspects of the rejection and reserve the right to address them, as needed, in future correspondence.

Initially, it is clear that the containers of Bonney contain no growth medium.

In addition, Bonney discloses a photo-optical clot detection device in which the contents of each container are stirred by subjecting a magnetic stirring element provided in the container to magnetic fields exerted by a plurality of magnets (See FIGS. 3 and 5, Col. 3, lines 45 to 53, Col. 4, lines 15 to 23, emphasis added), set forth below.

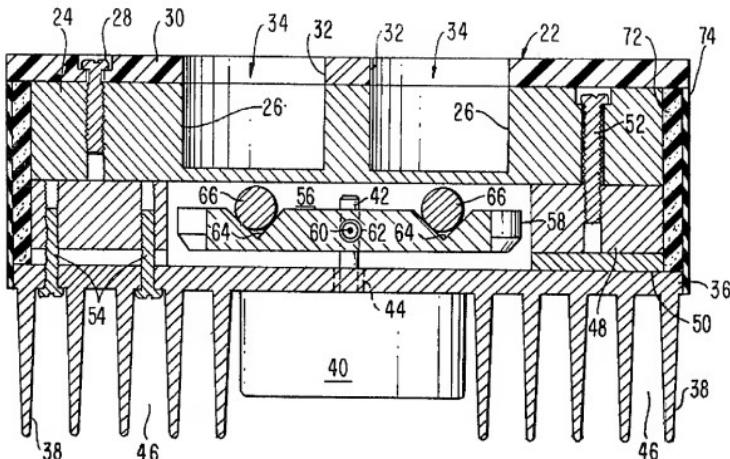


FIG. 3

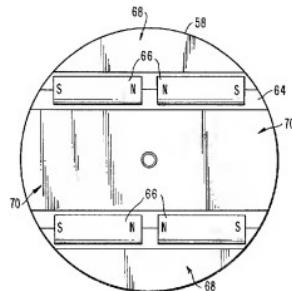


FIG. 5

A rotor 58 is positioned in the chamber 56 for rotation along with the shaft 42 of the electric motor 40. The rotor 58 is removably attached to the shaft 42 of the electric motor 40 by a set screw 60 threadedly received in a radially extending bore 62 provided in the rotor 58. The rotor 58 is also provided with a pair of V-shaped grooves 64 arranged along parallel chords of the rotor 58. Each of the grooves 64 receives a pair of permanent magnets 66.

In order to stir the contents of the vials 20 [located in openings (26)], the rotor 58 of the stirring and cooling subassembly 22 is rotated by the electric motor 40 at a rate in a range of from about 50 rpm to about 150 rpm depending upon the viscosity of the liquid ad the size of the stirring bar 76. Whereby the strong and the weak magnetic fields 68, 70, respectively, are successively rotated past each of the vials 20 ad, thus, each of magnetic stirring bars 76 contained therein. As a result of being alternately subjected to the strong magnetic fields 68 and the weak magnetic fields 70, the magnetic stirring bars 76 move erratically in the vials 20 to thereby knead as well as stir the reagents contained therein. The kneading and stirring action of the stirring bars 76 increases the turbulence of the reagents contained in the vials 20 to effect better mixing thereof. Thus, in accordance with the present invention, the reagents contained in all four of the vials 20 can be thoroughly mixed simultaneously.

Thus in the device of Bonney, as the rotor (58) is rotated, each of the magnets (66) successively pass by the vials (20), thus driving the magnetic stirring bars (76) therein.

Bonney therefore does not disclose or suggest the claimed invention, in which each sample vessel contains a growth medium and each of the openings for holding the sample vessels corresponds with only one of the magnets, wherein during operation of the magnet driver, the movement of only the corresponding magnet imposes a magnetic influence on the stirrer in the corresponding sample vessel to move the stirrer.

Thus, Bonney does not anticipate amended claim 19.

For these reasons, applicants submit that amended claim 19 and dependent claims 20-26, 28 and 29 are not anticipated by the Bonney reference.

**Claim Rejections – 35 USC § 103**

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bonney.

Applicants submit Bonney fails to disclose, teach, or suggest the claimed system of amended claim 19 as discussed previously. In addition, claim 27 being dependent an amended claim 19 is likewise patentable over the cited reference.

Accordingly, applicants assert that the cited reference fails to render the currently claimed invention obvious under 35 U.S.C. §103. Reconsideration and withdrawal of this rejection is earnestly solicited.

**Allowable Subject Matter**

The Examiner states “Claim 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.”

Applicants thank the Examiner for the recognition of allowability of claim 30.

In view of the amendments and remarks herein, applicants submit the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant’s agent at the telephone number set forth below.

Respectfully submitted,

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